

(a) that the accident shall have caused the death or disablement of a person;

(b) that such person was employed at work; and

(c) that in the case of disablement he is by reason of the disablement prevented from earning full wages at the work at which he was employed for more than four days.

In my view the proper interpretation of this section requires it to be applied to a person working under the conditions under which P.W. 1 was proved to have been working. He entered into a contract with the respondents to work an oil milling machine in their oil mill at a rate of "50 cents per trip" (and it appears from the evidence of the Manager of the respondent firm that "trip" means one complete grinding. In these circumstances, it seems to me to be immaterial whether the Manager of the mill had complete control over the method of performance of the work or not since it is quite clear that P.W. 1 was a person employed at work in the mill, and whatever label may be attached to the 50 cents per grinding which was his rate of remuneration it seems to me to have been wages for the purposes of this section. He was, by reason of disablement due to the accident, deprived of the ability to earn his remuneration for more than four days and that was sufficient to place upon the owners of the machinery a duty to report the accident. The appeal is allowed and for the acquittal I substitute a conviction under section 17(1) of the Machinery Ordinance and proceed to pass sentence on them under section 35(1).

*Appeal allowed.
Conviction substituted for
the acquittal.*

Solicitor: *Khong & Son.*

DEPUTY PUBLIC PROSECUTOR v. TOH HAN UH

[A.Cr.J. (Buttrose J.) October 31, 1958]

[Singapore — Magistrate's Appeal No. 254 of 1958]

Local Authority — Accidental damage to property of — Recovery of compensation, damages, etc. — Jurisdiction — Municipal Ordinance (Cap. 133 McElwaine Edn.), ss.259(10) and 371.

The issue for determination in this appeal was as to the construction of subsection (10) of section 259 of the Municipal Ordinance which reads as follows: "Any person who carelessly or accidentally throws down or damages any pipe, line, pillar or lamp, whether within or without the Municipality, belonging to the Commis-

sioners shall pay such sum of money by way of satisfaction to the Commissioners for the damage done, not exceeding five hundred dollars, as any Police Court thinks reasonable. Nothing in this sub-section shall prevent the Commissioners from taking any legal proceedings open to them at law before any Court having jurisdiction for the recovery of the full amount of the damages so caused by such person."

Held: the object of the subsection is to enable the City Council to recover a sum in compensation for the damage caused either accidentally or carelessly to its property specified in the subsection as a penalty in a summary way. The sum recoverable must be such as a Magistrate's Court thinks reasonable in relation to the damage actually caused, not exceeding five hundred dollars.

[Editorial Note: see now section 61 of the Local Government Ordinance, 1957 which deals with damage to local authority property.]

MAGISTRATE'S APPEAL.

M. Karthigesu for the Crown.

G. Abisheganaden (amicus curiae) for the respondent.

Buttrose J.: — This was an appeal by the Deputy Public Prosecutor from a decision of the City Magistrate's Court ordering the respondent to pay a nominal sum of \$10 to the City Council by way of satisfaction for the damage done by the respondent to a street lighting pole.

The respondent was charged under subsection 10 of section 259 of the Municipal Ordinance as follows:

"That you, having accidentally damaged street lighting pole No. 28B Paya Lebar Road, Singapore, on 6 July, 1957 whilst driving car SF.5987 you do pay by way of satisfaction such sum for the damage done as this Court may think reasonable under and by virtue of section 259(10) of the Municipal Ordinance."

At the trial the respondent who was represented by Counsel pleaded guilty.

The facts were that the respondent in attempting to avoid a collision with a trishaw drove his car off the road and damaged the street lighting pole. The cost of repairing the pole it was alleged was \$232.22 but apart from a statement by prosecuting Counsel to this effect no evidence on this point was so far as the record goes before the Court.

Apart from the present summons no proceedings were taken against the respondent but the trishaw rider was proceeded against, presumably under the Road Traffic Ordinance, and compounded his offence by paying a sum of \$5.

These facts were admitted by the respondent.

On the hearing of the appeal the respondent was not represented by Counsel although Mr.

Abisheganaden who appeared for him in the Court below was present and intimated he held a watching brief on behalf of the respondent.

At the close of Counsel for the appellant's argument, in view of the respondent's obvious inability to present his own case, I invited Mr. Abisheganaden to appear and argue the case on the respondent's behalf as *amicus curiae*.

On the conclusion of the hearing I allowed the appeal and directed that the order of the Magistrate that the respondent do pay a nominal sum of \$10 to the City Council be set aside. I further directed that the question of what sum should be paid by the respondent to the City Council by way of satisfaction for the damage done to the street lighting pole be referred back to the City Magistrate's Court for determination. I indicated I would give my reasons briefly in writing later.

That this Court had jurisdiction to entertain this appeal is established by section 371 of the Municipal Ordinance and the only issue of substance for determination is as to the construction of sub-section 10 of section 259 of the Municipal Ordinance which reads as follows:—

"Any person who carelessly or accidentally throws down or damages any pipe, line, pillar or lamp, whether within or without the Municipality, belonging to the Commissioners shall pay such sum of money by way of satisfaction to the Commissioners for the damage done, not exceeding five hundred dollars, as any Police Court thinks reasonable. Nothing in this sub-section shall prevent the Commissioners from taking any legal proceedings open to them at law before any Court having jurisdiction for the recovery of the full amount of the damages so caused by such person."

The object of the sub-section clearly was to enable the City Council to recover a sum in compensation for the damage caused either accidentally or carelessly to its property specified in the sub-section as a penalty in a summary way. The sum recoverable must be such as a Police Court thinks reasonable in relation to the damage actually caused, not exceeding five hundred dollars.

In my opinion the appellant had the option to proceed either at common law for negligence or under section 259 (10) of the Municipal Ordinance to recover a sum in compensation up to five hundred dollars before the City Magistrate without proving negligence.

The respondent having pleaded guilty to the charge of accidentally damaging the street lighting pole the only remaining issue was as to what sum the Court considered reasonable should be paid by way of satisfaction for the damage done.

If the Court considered that \$232.22 was a reasonable sum to be paid in compensation for the damage done to the street lighting lamp then that sum should have been awarded.

The learned City Magistrate in awarding a nominal sum of \$10 was, in my view, labouring under a misconception. He appeared to be under the impression that he could apportion the damage between the respondent and the trishaw rider, who was not a party to the proceedings in the Court below, which of necessity involved considerations of negligence, but, as I have indicated, the very purpose of the sub-section was to avoid any such considerations. In my view he had no power in this case to apportion the damage.

It was of course always open to the respondent if he could establish negligence on the part of the trishaw rider to take proceedings against him to recover such sum as he, the respondent, was called upon to pay.

There was, as I have already mentioned, nothing on the record to indicate what the damage was or how the amount of \$232.22 was arrived at nor did it appear that the learned Magistrate directed his mind to the question.

In these circumstances I allowed the appeal and set aside the order of the Magistrate that the respondent do pay a nominal sum of \$10 to the City Council. The question of the amount to be paid by the respondent to the City Council by way of satisfaction for the damage done to the street lighting pole must be referred back to the City Magistrate's Court for determination in the light of this judgment.

Appeal allowed.

Solicitors: *Allen & Gledhill; C. J. Koh & Co.*

NEO KOON CHEO v. REG.

[A.Cr.J. (Ambrose J.) January 17, 1959]

[Singapore — Magistrate's Appeal No. 87 of 1958]

Dangerous Drugs Ordinance (Cap. 137), s.37(c) and (d) — Possession — Statutory Presumption — Onus of proof — "Custody, control and possession" — Meaning of.

In this case a party of three detectives made a raid on the attic of a premises, and on entering the attic two of the detectives saw the appellant holding a confectionery tin in his hands and attempting to get out of the attic through an opening. On examination the tin was found to contain a phial of chandu, a small tin of chandu dross, an opium pipe-head, a rag and some tools.